

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
1401 H Street, NW, Room 3000
Washington, D.C. 20530

CASE NUMBER 1: 00CV02824

Plaintiff,

v.

GEORGIA-PACIFIC CORPORATION,
133 Peachtree Street, NE
41st Floor
Atlanta, Georgia 30303

and

FORT JAMES CORPORATION,
1650 Lake Cook Road
Deerfield, Illinois 60015,

Defendants.

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against defendants to prevent Georgia-Pacific Corporation's ("G-P") proposed acquisition of the Fort James Corporation ("FJ"), and alleges as follows:

1. G-P and FJ compete vigorously against each other in the production and sale of paper towels, paper napkins and bathroom tissue (collectively "tissue products") for use in commercial and public settings, such as office buildings, factories, restaurants, hospitals, schools, hotels and airports. Tissue products sold for use in commercial or public settings are referred to

in the industry as away-from-home (“AFH”) tissue products. FJ and G-P respectively are the largest and second largest producers, and two of only three significant producers, of AFH tissue products in the United States.

2. The proposed acquisition will eliminate substantial head-to-head competition between G-P and FJ in the production and sale of AFH tissue products, which has benefitted consumers significantly. The proposed transaction will result in G-P accounting for approximately 66 percent of AFH tissue products sold in the United States and will give G-P the power to unilaterally reduce output and raise prices.

3. Unless the proposed acquisition is enjoined, G-P's acquisition of FJ will substantially lessen competition in the production and sale of AFH tissue products sold in the United States in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

I. JURISDICTION AND VENUE

4. This Complaint is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. G-P and FJ sell AFH tissue products in the flow of interstate commerce. Defendants’ activities in producing, marketing, promoting and selling AFH tissue products also substantially affect interstate commerce. Defendants purchase substantial quantities of materials, equipment, supplies and services for use in their respective businesses from sources located outside of the District of Columbia. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a) and 1345.

6. G-P is a Georgia corporation that has its principal place of business in Atlanta, Georgia. G-P transacts business in the District of Columbia. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391.

7. FJ is a Virginia corporation that has its principal place of business in Deerfield, Illinois. FJ transacts business in the District of Columbia. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391.

II. DEFENDANTS

8. G-P is the second largest forest products company in the United States, and also the second largest manufacturer of AFH tissue products in the United States. In 1999, G-P reported sales of approximately \$18 billion, with \$1.4 billion of sales in tissue products in the United States, and \$674 million of sales in AFH tissue products in the United States.

9. FJ is the largest tissue manufacturer overall in the United States, and is the largest manufacturer of AFH tissue products in the United States. In 1999, FJ reported sales of approximately \$7 billion, with \$3.1 billion of sales in tissue products in the United States, and \$1.3 billion of sales in AFH tissue products in the United States.

III. THE PROPOSED TRANSACTION

10. On or about July 16, 2000, G-P and FJ entered into an Agreement and Plan of Merger pursuant to which G-P would purchase FJ for approximately \$11 billion in stock and cash ("Purchase Agreement").

IV. TRADE AND COMMERCE

A. Relevant Product Markets

11. AFH tissue products include bathroom tissue, paper towels and paper napkins

consumed primarily in commercial and other away-from-home establishments. AFH tissue products differ from retail tissue products (those sold in grocery stores, club stores and other retail outlets) in numerous important respects, including significant physical differences, distinct distribution channels, branding, industry recognition, purchaser and end user perception, and significant price differences. Additionally, AFH tissue products are often produced using distinct production equipment and processes, and many tissue product manufacturers produce only AFH or retail tissue products, but not both.

12. Three separate categories of AFH tissue are relevant products (or lines of commerce) within the meaning of the Clayton Act: AFH bathroom tissue; AFH napkins; and AFH towels. There are no reasonably interchangeable substitutes for any of these relevant products to which a sufficient number of consumers would switch in response to a small but significant increase in price that would make such a price increase unprofitable. For instance, purchasers of AFH napkins would not substitute AFH bathroom tissue or AFH towels to meet their demand, since the physical properties of each product differ in terms of absorbency, size, texture and softness.

13. Significant amounts of AFH tissue products are sold to national accounts, such as quick serve restaurants, which can have thousands of locations across the United States. Many national account customers require a national supplier of AFH tissue products to ensure consistent product quality and timely delivery, and to realize economies of scale in purchasing.

14. Each AFH tissue product is produced on very large, expensive and complex machines ("tissue machines"), which are suitable only for making tissue paper. A tissue machine combines water and certain types and grades of pulp at the "wet end" of the machine and

processes these materials into various types, grades and basis weights of tissue paper, which correspond to the particular physical properties required by the finished tissue product being produced. As tissue paper comes off the "dry end" of the machine, it is wound into a "parent roll" which can weigh several tons and measure eight to ten feet in diameter and 25 feet in length. Tissue parent rolls are subsequently converted by specialized machines into finished tissue products. This manufacturing process permits some supply substitution by AFH tissue manufacturers among the three AFH tissue products. Thus, while each AFH tissue product is a separate line of commerce and a relevant market for purposes of the Clayton Act, the ability of suppliers to switch among AFH tissue products means that in each market the competitive effects will be similar. Thus, the various AFH tissue products can be aggregated and referred to as the AFH tissue market.

B. Relevant Geographic Market

15. The relevant geographic market within the meaning of the Clayton Act is no larger than the United States, Mexico and Canada ("North America"), and may be smaller. AFH tissue products are light and bulky, and consequently, a relatively small amount of product will fill a truck, making shipping long distances uneconomical. Accordingly, the amount of AFH tissue products imported into the United States is negligible, and a small but significant increase in the price of any AFH tissue product would not cause a sufficient number of purchasers to switch to products manufactured outside the United States to make the price increase unprofitable. Parent rolls of tissue paper (i.e., those not yet converted into a final tissue product) can be shipped economically longer distances than finished tissue products, making it profitable to ship a tissue roll from Canada or Mexico to a converting machine in the United States for processing into a

finished good, under the right circumstances.

C. Anticompetitive Effects

16. The proposed acquisition will reduce competition substantially in the production and sale of AFH tissue products in the United States. FJ and G-P are two of the three largest producers of AFH tissue products in the United States and North America. G-P and FJ directly compete against one another to produce and sell AFH tissue products in the United States. This direct and aggressive competition between G-P and FJ benefits consumers through lower prices, higher quality, better service, and improved products. If the combination of G-P and FJ is permitted, this competition would be eliminated.

17. G-P and FJ are two of only three significant suppliers of AFH tissue products in the United States. In this highly concentrated market, FJ has approximately a 43 percent market share, and G-P has approximately a 23 percent market share. After the acquisition, the combined firm would account for approximately 66 percent of AFH tissue product sales at the wholesale level in the United States. Based on available North American capacity for parent rolls, FJ has approximately a 25 percent market share, and G-P has approximately an 11 percent market share. After the acquisition, the combined firm would account for approximately 36 percent of available North American parent roll capacity.

18. The AFH tissue market will become substantially more concentrated if G-P acquires FJ. Based on the dollar sales of AFH products in the United States, using the Herfindahl-Hirschman Index (“HHI,” which is defined and explained in Appendix A), the proposed transaction will increase the HHI by more than 1900 points to a post-merger level of about 4800. Based on available North American capacity for tissue, the transaction will increase

the HHI by more than 500 points to approximately 2000.

19. The proposed acquisition will raise G-P's share of capacity to the level where it will have the ability and incentive to exercise market power unilaterally by reducing its output in the market. Demand for AFH tissue products is relatively inelastic, and manufacturers of AFH parent rolls available to United States converters are operating at or near capacity and are not able to expand output quickly. G-P will have a sufficient share of industry capacity to profit from the increase in price caused by a unilateral reduction in output.

20. The anticompetitive effects of the proposed acquisition will accrue across the relevant AFH tissue market, but will be particularly burdensome for national accounts, such as quick serve restaurants, which require uniform quality and consistency, as well as large volumes of product delivered on a timely basis to numerous locations across the United States. Prices charged to these national accounts, which typically purchase AFH tissue products through competitive bidding, would likely rise post-acquisition as a result of the loss of one of only a few AFH tissue producers able to meet their requirements.

D. Entry Is Unlikely to Deter the Exercise of Market Power

21. Entry into the production and sale of AFH tissue products in the relevant market is difficult, time consuming and expensive, and would not be timely, likely or sufficient to deter the likely exercise of market power in the sale of these products by the combined firm in the reasonably foreseeable future.

22. Entry requires a high sunk capital investment in equipment and facilities, and takes in excess of two years to begin producing tissue products. Manufacturing and selling AFH tissue products would require: the purchase of one or more expensive tissue paper making machines;

extensive environmental permitting; the purchase of converting lines to produce finished tissue products; plus a reliable distribution system and an extensive sales force.

V. VIOLATIONS ALLEGED

23. The proposed transaction will likely have the following effects, among others:
 - a. Competition generally in the production and sale of AFH tissue products in the relevant market would be substantially lessened;
 - b. Actual and potential competition between G-P and FJ in the production and sale of AFH tissue products in the relevant market would be eliminated;
 - c. Prices charged for AFH tissue products in the United States will likely increase.

24. Unless enjoined, the proposed transaction will violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

VI. REQUESTED RELIEF

Plaintiff requests:

1. That the proposed acquisition of FJ by G-P be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;
2. That defendants and all persons acting on their behalf be permanently enjoined and restrained from implementing the Purchase Agreement or from entering into or carry out any other agreement, understanding or plan, the effect of which would be to combine the businesses or assets of the

defendants;

3. That plaintiff be granted such other and further relief as the Court may deem proper; and
4. That plaintiff recover the costs of this action; and
5. That plaintiff receive such other and further relief as the case requires and the Court deems proper.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/
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Assistant Attorney General (Acting)

/s/
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Chief, Legal Policy Section

/s/
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APPENDIX A

DEFINITION OF "HHI"

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 21th day of November, 2000,
I caused copies of the COMPLAINT, FINAL JUDGMENT, HOLD SEPARATE
STIPULATION AND ORDER, and UNITED STATES' EXPLANATION OF
CONSENT DECREE PROCEDURES to be served upon the following:

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